Calendar No. 394

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-233

CLEAN WATER ACT AMENDMENTS OF 1983

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 431

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

22-980 O

WASHINGTON : 1983

S323-20

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROBERT T. STAFFORD, Vermont, *Chairman*

HOWARD H. BAKER, JR., Tennessee
JOHN H. CHAFEE, Rhode Island
ALAN K. SIMPSON, Wyoming
JAMES ABDNOR, South Dakota
STEVE SYMMS, Idaho
PETE V. DOMENICI, New Mexico
DAVE DURENBERGER, Minnesota
GORDON J. HUMPHREY, New Hampshire

JENNINGS RANDOLPH, West Virginia
LLOYD BENTSEN, Texas
QUENTIN N. BURDICK, North Dakota
GARY HART, Colorado
DANIEL PATRICK MOYNIHAN, New York
GEORGE J. MITCHELL, Maine
MAX BAUCUS, Montana

BAILEY GUARD, *Staff Director*
JOHN W. YAGO, JR., *Minority Staff Director*

CONTENTS

	Page
General statement	1
Major issues:	
Pretreatment	4
Water qualtity standards and toxics control	6
Ocean discharge waivers	7
Sewage sludge management	10
Section-by-section analysis:	
Authorizations	11
Chesapeake and Narragansett Bay programs	12
Compliance dates	14
Ocean waiver	16
Water quality after the attainment of best available technology	17
Indirect discharge of conventional pollutants	20
Civil and criminal penalties	20
Partial NPDES program approval	21
NPDES permit term and reopener	22
Judicial review and attorney's fees	23
Nonpoint source pollution	25
Stormwater runoff from mining operations	25
Anti-backsliding	26
Sewage sludge	26
Interstate dispute resolution	27
Preservation of other rights	28
Hazardous waste pretreatment study	29
Hampton, N.H., ad valorem tax amendment	29
Cost of legislation	29
Evalutation of regulatory impact	29
Rollcall votes	30
Hearings	30
Views:	
Additional views of Senators Abdnor, Burdick, and Symms	31
Supplemental views of Senator Symms	33
Changes in existing law	37

Calendar No. 394

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-233

CLEAN WATER ACT AMENDMENTS OF 1983

SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany S. 431]

The Committee on Environment and Public Works, to which was referred the bill (S. 431) to amend the Clean Water Act, as amended, to authorize funds for fiscal years 1984, 1985, 1986, and 1987, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

In the 97th Congress, the Su[1] committee on Environmental Pollution conducted five days of hearings on amendments to the Clean Water Act. At those hearings, 38 witnesses testified on the need to amend the Act. The Administrator of the Environmental Protection Agency submitted amendments to the Clean Water Act which were introduced by request. Congress failed to act on the amendments last year.

During this session of Congress, the Subcommittee on Environmental Pollution once again held hearings on the need to amend the Clean Water Act. Two bills, S. 431 and S. 432, provided the focus for the hearings. The Administration did not formally submit proposed amendments. Four days of hearings were held and 37 witnesses testified on a variety of subjects.

22-980 O

As a result of these hearings, it was generally concluded that the Clean Water Act did not require major changes. Its structure was deemed sound and its objective—the maintenance and protection of the physical, chemical, and biological integrity of the Nation's waters—remains intact.

The Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act Amendments of 1977 established a comprehensive approach to cleaning up the Nation's waters by establishing a regulatory framework for the phased implementation of water quality control technologies, for industrial and municipal dischargers of toxic and conventional pollutants, necessary to protect and maintain the integrity of the Nation's waters. The Act provides for administrative, standard-setting, enforcement, and funding mechanisms to achieve the designated clean water goals. The portion of the Act providing Federal assistance to aid communities in constructing municipal treatment plants was dealt with by Congress in 1981. S. 431 addresses other key aspects of the legislation.

In 1972, clean water legislation was born from the public's demand that pollution be eliminated from the Nation's waterways in order to protect public health and the environment. A Louis Harris poll conducted in December 1982 for the Natural Resources Council of America showed that 74 percent of the American people support the goal of achieving fishable swimmable waters. The amendments made by S. 431 will assist in the progress toward that goal.

The interim water quality goal of achieving fishable, swimmable waters everywhere by July 1, 1983 was established in the 1972 Act. Although progress toward attainment of that goal is underway, it has not been achieved on a nationwide basis. In some areas of the country, this goal has been achieved by the implementation of stringent water pollution control measures. Information on the costs and benefits that have resulted has caused the Committee to reassess whether its achievement nationally is still in the public interest. However, the Committee felt that further progress could be made in this direction in accordance with the strong public support for the Act. Therefore, the notion of allowing a determination of progress made to date and a postponement of further pollution control steps before going forward with implementation of other portions of the Act was rejected.

In the view of the Committee, movement toward the attainment of the goals and objectives of the Act requires the uniform installation of the best available technology economically achievable by all dischargers. In the process of reporting out S. 431, the Committee carefully evaluated the common complaint of dischargers that uniform compliance results in treatment for treatment's sake. In order to avoid this, some proposed allowing a permit modification which would waive BAT requirements for a point source during the life of a permit. Such a modification would be based on an analysis of water quality. This notion was rejected by the Committee in the interest of assuring that an adequate level of pollution removal is achieved in an equitable manner.

The technology-based approach to water pollution control was adopted in 1972 primarily because of the historical ineffectiveness of the previous water quality-based approach. Failure of this type

of approach was due to uncertainties about the relationship between pollutant loadings and water quality and the association between water quality and health and environmental effects. In the absence of this knowledge, implementation of uniform control technologies provides an immediate and effective method of clean-up. Amendments in S. 431 do not alter this approach. They support the public promise made to achieve scheduled progress toward the elimination of pollution from the Nation's waters.

The Act currently requires the installation of the best conventional technology (BCT) and best available technology (BAT) by July 1, 1984. The 1977 standard was designed to address conventional pollutants for the most part. The 1984 deadline for the installation of BAT was designed to control non-conventional pollutants and toxic pollutants. Congress has had to adjust compliance deadlines in the past in order to give the Environmental Protection Agency an opportunity to develop complicated industrial toxic pollutant standards to be written into NPDES permits. However, since the EPA has not issued final guidelines for many industrial categories, many industrial waste discharge permits have not been written on the basis of guidelines, either for BPT or BAT, but rather on the basis of best engineering judgment. Final limitations incorporated into these permits were based on negotiations between the issuing agency and the discharger rather than on uniform standards promulgated by the EPA. This is not to say that these permits have not played a considerable role in reducing pollutants being discharged into the Nation's waters. Both industry and the local, State, and Federal permitting authorities are to be commended for progress made to date.

Effluent guidelines for most categories are being finalized and incorporated into discharge permits. Increased removal of toxic pollutants is expected as a result. The intent of the Act is to agressively control those discharges preventing achievement of the goals. This productive trend should not impeded. The amendments in S. 431 support this momentum. While necessary compliance deadline adjustments have been made, no major changes are warranted. To allow modifications now would only jeopardize the gains made to date.

The quality of the Nation's waters is improving. The progress made in the last decade has been visible as the most evident types of pollution have been controlled.

Much of the acclaim for the Clean Water Act is due to the fact that biological communities are being re-established in areas where they have been absent for decades because of pollution. This regeneration is occurring primarily because of the reduction in conventional pollutant loadings from municipal and non-municipal sources. However, it is disturbing that it is now necessary to warn people against unlimited consumption of fish caught in these previously unpopulated water bodies. With several hundred million pounds of toxic pollutants being discharged annually into the Nation's waters, it is not surprising that these fish and shellfish, which can now be sustained because of increased levels of oxygen, are being systematically contaminated by toxic pollutants to the point of being a potential health threat to those who eat them.

Clean water gains from now on will be more difficult and more costly to achieve because of the focus on the control of persistent, toxic pollutants through the implementation of advanced control technology and the issuance of more comprehensive permits. In instances where water quality has been extraordinarily degraded, S. 431 requires the Environmental Protection Agency to move beyond BAT controls in order to attain water quality standards. Continued attention to these problem areas is required to keep faith with the commitment Congress made to the public. It is vital that toxic pollutants be controlled to protect public health and our national water resources. S. 431 provides the necessary adjustments in the Clean Water Act to reinforce pollution reduction requirements and bring achievement of the Act's goals closer to realization.

In addition to specific amendments that were made to the Clean Water Act other issues were raised and discussed by the Committee. Among other issues is the interpretation that some EPA regional offices are giving to section 101(g).

The Clean Water Act establishes a number of goals which may need to be adapted in different geographic areas that exhibit extreme climatological conditions. These goals depend on balancing the facts surrounding each case so that solutions to prevent, reduce, and eliminate pollution are consistent with State and Federal programs for preserving and managing water resources. It is thus the Committee's intent that section 101(g) should be interpreted so that restrictions resulting from State water laws cannot be used to disapprove State jurisdiction over the NPDES program or other programs. Resolution of potential conflicts can better be addressed in the context of specific permit proceedings, which take into account individual circumstances that may vary widely.

Major Issues

PRETREATMENT

Pretreatment of industrial wastes discharged into publicly owned treatment works was mandated by the Clean Water Act of 1972 to prevent those wastes from interfering with or passing through municipal waste treatment facilities or contaminating sludge. The national pretreatment program is based on application of technology-based uniform treatment standards developed by the Environmental Protection Agency. These standards are applicable to individual industrial categories which discharge priority pollutants into publicly owned treatment works. The program is implemented at state and local levels according to the Agency rules governing the issuance and enforcement of pretreatment limits.

Although this pretreatment requirement was enacted in 1972, the Agency has had difficulty putting the program in place. This fact was recognized by Congress in 1977 with an extension of the compliance period for implementation and the inclusion of a removal credits provision in section 307. Removal credits were authorized with the intent of avoiding redundant treatment by industries discharging into well operated municipal facilities. Under this provision, municipal facilities may modify pretreatment standards for industrial users on a case-by-case basis. The modification is

based upon the proven removal capability of the municipal facility for a particular pollutant.

Significant delays have occurred in the implementation of the pretreatment program because of problems associated with the issuance of administrative rules and the development of categorical pretreatment standards. EPA issued rules on February 2, 1977, to comply with the requirements of section 307(b) that it establish administrative mechanisms at all levels of government to implement the pretreatment program. The rules were immediately challenged by numerous interested parties.

As a result of these challenges and other administrative decisions, the general pretreatment rules were not final until January 20, 1981. After additional litigation, the regulations became effective, in part, on January 31, 1982. The EPA has been attempting to develop uniform pretreatment standards for industrial categories since 1973. Their efforts have been unsuccessful until recently. This delay has been regrettable because of the uncertainty it has caused among the affected industries and municipalities. That uncertainty has served as an impetus to efforts by those industries and some municipalities to seek modification of the Federal program requirements.

During hearings before the Environmental Pollution Subcommittee last year, a number of witnesses testified about the need to allow communities, which had developed their own pretreatment programs in advance of Federal categorical standards, the opportunity to demonstrate equivalence with the forthcoming Federal standards. Although no bill was reported by the Committee in 1982, this idea appealed to many Members.

On February 3, 1983, Senators Chafee and Randolph introduced amendments to the Clean Water Act. These amendments included a provision which would have allowed a municipal facility to have the pretreatment requirements modified with respect to it and its indirect dischargers if it could meet certain performance conditions. The conditions required before a modification could be granted included at a minimum, secondary treatment capability and the establishment of a pretreatment program based on numerical standards for toxic pollutants.

During the hearings before the Environmental Pollution Subcommittee, witnesses representing industry, environmental, and state and local concerns addressed themselves to the pretreatment provisions of S. 431. The Subcommittee focused considerable attention on it because of the central role that pretreatment plays in the toxic pollutant control strategy of the Act.

The alternative pretreatment provision in S. 431 ultimately proved unsatisfactory. Even though many Members of the Committee favored some type of modification, none could be agreed upon. An alternative program could not be found that could reasonably be expected to protect against pass through and sludge contamination without being so restrictive that no facility could qualify.

Committee members also acknowledged that experience with existing waiver provisions under the Clean Water Act has been that, while waivers from uniform requirements may appear to be desirable, in the long run they increase program uncertainty. Under one such provision in section 301, a waiver for secondary treatment

22-980 O—83——2

is provided a POTW upon a showing that, among other things, no environmental degradation will occur. That provision has generated many applications for discharges into offshore waters that were never considered appropriate or eligible when section 301(h) was enacted in 1977. As a result, many communities that should be well into the construction of secondary treatment facilities have instead spent financial resources pursuing waivers. This type of uncertainty and delay cannot be allowed in the pretreatment program which serves as the keystone of toxic pollution control for the Nation's waters.

EPA Administrator William Ruckelshaus testified before the Committee that although the pretreatment modification concept in S. 431 was appealing, the potential demands on his Agency's resources for implementation would be great. He also expressed his concern about the Agency's ability to assure an adequate and consistent level of toxics removal under such a program. For these reasons, he could not support the provision.

In light of these issues, the pretreatment provision as it appeared in S. 431, as introduced, was deleted. The Committee chose not to alter any existing provisions of the program including the deadline for compliance with categorical pretreatment standards which continues to be not later than three years from the date of promulgation.

WATER QUALITY STANDARDS AND TOXICS CONTROL

Since October 1982, when the Environmental Protection Agency proposed regulations to revise existing procedures for establishing water quality standards, the Committee has carefully reviewed the status of standard-setting and its relationship to other portions of the Act. The October 1982 proposals were counter to the objectives of the Act and significantly weakened the existing regulations. Key among the regressive proposals were allowances for the downgrading of water use designations based on analyses of use attainability and benefit-cost assessments and the granting of variances to individual dischargers from compliance with water quality criteria on the basis of economic hardship.

Many Members were sufficiently concerned about these aspects of EPA's proposed regulations that they wrote to then Acting Administrator John Hernandez and asked that the proposal be withdrawn. In further response to this attempt to revise existing regulations, S. 431 was introduced, with a provision that froze all stream classifications in place as of January 1, 1982. Other than specifically writing the existing regulations into law, this appeared to be the simplest way to address the Committee concern that the interim water quality goal of the Act be maintained.

The role of water quality standards in the regulatory structure of the Act is crucial to achievement of the interim water quality goal. Many of the provisions dealing with upgrading requirements and protecting high quality water in the existing regulations even predate the 1972 Act. An important example is the anti-degradation policy which supports protection of water quality meeting or exceeding the level necessary to support a designated use. This policy is required by the current law and has been embodied in regula-

tions since the late 1960's. The Committee was sufficiently concerned about the adverse impact that the proposed revisions to the regulations would have in this decade and a half old policy, that an explicit anti-degradation policy codifying the existing regulations was included in S. 431 as reported. Section 6 of S. 431 as reported also places restrictions on downgrading of State water quality standards based on existing water quality standard regulations and the stated goals of the Act.

In planning for the next decade, an obvious issue that has to be addressed relates to the problem of persistent toxic pollution. It is clear that some water bodies are so degraded that compliance with the best available technology (BAT) and secondary treatment requirements will not necessarily assure the attainment of the water quality goals of the Act. In those instances, it may be necessary to institute additional pollution controls. S. 431 provides a mechanism for doing this. Modifications have been made to sections 302, 303, 304, and 305 of the Act, which will support the development of water quality based effluent limitations after the implementation of best available technology requirements and State water quality standards consistent with the objectives and goals of the Act.

The reported bill requires States to undertake a progressive program directed at reducing toxic pollutant loads where best available technology is not sufficient to meet State water quality standards. The three key requirements of the program are:

(1) Identification of water bodies, within two years of enactment, which will not meet these water quality standards after the implementation of BAT because of toxic pollutants;

(2) Adoption of numerical criteria for the "problem" pollutants in such water bodies, based on EPA water quality criteria, and utilization of criteria based on biomonitoring techniques to supplement numerical criteria, or for less toxic pollutants, until numerical criteria can be developed; and

(3) Establishment of effluent limitations, based on these criteria, and incorporation of these into permits which must be complied with no later than three years after their establishment.

These requirements will provide the Environmental Protection Agency and the States the authority to implement necessary additional control measures through the use of NPDES permits and thereby support the achievement of the Act's goals.

OCEAN DISCHARGE WAIVERS

In 1977, Congress amended the Clean Water Act to allow municipalities discharging into marine waters to apply to the Administrator of the Environmental Protection Agency for waivers from the uniform secondary effluent limitation requirement. In the period following the enactment of the amendments and prior to the introduction of S. 431, the EPA tentatively approved 16 waiver applications and tentatively denied 8. However, concern has been expressed that since the 1981 municipal construction grants amendments were enacted many more applications have been submitted that do not meet with the congressional intent of section 301(h) but

the EPA may have to grant many of these waivers applications unless Congress provides the Agency with further guidance.

When this provision was enacted, it was intended that only municipalities with primary treatment capability discharging into deep and unstressed waters be considered for these waivers. It was expected that a number of West Coast and very few East Coast communities could meet the conditions laid out in section 301(h) to obtain a waiver. However, Court decisions have blurred the intent of Congress so that both East and West coast communities discharging sometimes untreated sewage effluent can expect to receive waivers. This should not be the case.

In order to provide the Agency a clear mandate to deal with marine discharges, the reported bill places additional restrictions on those communities which seek waivers. The first step the Committee took was to amend section 301(h)(5) to require that sources introducing wastes into POTW's are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements. Current regulations require communities to develop pretreatment programs. This amendment makes it clear that Congress intends that no final waivers should be granted unless the applicant has satisfied this requirement. It is intended that, by the time of approval, the applicant must have had an approved pretreatment program with which indirect dischargers are in compliance. This requirement will result in denial of waivers where non-compliance among indirect dischargers is widespread. However, it is not the intent that EPA deny waivers to POTWs which are diligently implementing a pretreatment program merely because an insubstantial percentage of indirect dischargers with a trivial amount of flow are not in compliance with pretreatment requirements. The Administrator should exercise his discretion in determining the significance of non-compliance and examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. Emphasis should be placed on overall compliance, rather than focussing on individual indirect dischargers which may not be in compliance.

In addition, the amendment requires communities of 5,000 or more to have adopted and have in effect a program that controls the issuance of toxic pollutants into a publicly owned treatment works. It is clear that many categorical pretreatment requirements will not be applicable at the time these waivers are considered and granted. In place of the national categorical standards communities are expected to have enforceable local limits for their industries. This amendment is necessary because of the large number of POTWs seeking waivers which do not have approved programs. Based on information provided the Subcommittee by EPA, of the 207 applications on file approximately 50 do not have approved pretreatment programs.

The review of these applications takes a significant amount of time. Applicants amass volumes of information which must receive the Agency's attention. However, with Agency resources constantly being placed under additional burdens, it is appropriate that these new requirements in section 301(h) should help the Agency limit its review time. Communities seeking waivers should understand that

no new waivers will be granted unless they are in compliance with this provision.

New parapgrah (8) of section 301(h) requires that at the time a permit modification becomes effective the applicant is discharging effluent which has received primary or equivalent treatment. Section 301(h) was never intended to authorize the discharge of untreated sewage. This amendment makes clear that operating primary treatment is a minimum to qualify for a waiver. Flexibiity is provided for the Agency to deal with unique problems in Alaskan Villages and the Trust Territories where screening and skimming of waste may constitute primary treatment and be sufficient, providing that all other section 301(h) criteria are otherwise satisfied.

Concern was also expressed for marine bays and estuaries which receive wastes from POTW's seeking waivers. These waters represent some of our most productive biological areas and deserve to be protected against degradation. Two amendments to section 301(h) have been made for that reason. The first amendment clarifies that marine waters receiving discharges exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW. While this amendment deals with "marine waters" it is expected that it will have its greatest impact on marine bays and estuaries. It is intended to be used as another test by the Agency in evaluating discharges into these waters to make certain that sufficient flushing exists so as not to allow entrapment of previously discharged waste. While this provision does not affect any tentative approvals granted to date, it is expected to give the Agency an important guideline for future review of applicants' discharges into marine waters.

The last amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that for saline estuarine waters, a section 301(h) modification may not be issued if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge.

For the purpose of section 301(h)(8)(B) the term "balanced indigenous population" is defined as the community that can reasonably be expected to occur in a given area absent pollution. Its existence is generally determined by comparing the ecological community in question to that of nearby healthy communities existing under comparable but unpolluted physical and environmental conditions.

Again, attention is given to saline estuaries receiving discharges which are not achieving the interim water quality goal of the Act. It is intended that applicable water quality standards refers to standards for BOD, SS, DO, and toxic pollutants. The phrase "such other standards" necessary to assure support and protection of such uses refers to marine water quality criteria necessary to support these uses.

Waivers from secondary treatment for discharges into marine estuaries should be given special reviews from the Agency, when the estuaries are stressed from a combination of sources. Partial treat-

ment of sewage into already polluted estuaries should not be allowed. Previously EPA looked at only the source seeking the waiver in making its determination. Under this amendment the Agency cannot grant a waiver for a discharge into an estuary whether or not the responsibility for the failure to meet the interim goal of the Act lies with the discharger. Waiving treatment requirements for a point source discharging into an unhealthy body will not result in reasonable further progress toward achieving the goals of the Act.

SEWAGE SLUDGE MANAGEMENT

Regulations providing guidelines for sludge use and disposal were required to be published within one year of enactment of the Clean Water Act Amendments of 1977. Although the Environmental Protection Agency has studied the sludge problem for several years, it has not yet succeeded in publishing the required regulations.

This section establishes phased deadlines for the promulgation of guidelines for use and disposal of sewage sludge. Further it provides direction to the Environmental Protection Agency concerning the development of these guidelines, and clarifies the relationship of Section 405 to other laws which govern the use and disposal of sludge.

This section establishes new, realistic deadlines for promulgation of the sludge regulations. EPA officials testified that development of these regulations is now a high priority and that these deadlines can be met. The Committee expects EPA to meet this commitment.

This section requires that sludge regulations be developed in two phases. The two phases differ solely on the basis of the amount of information that is currently available to support the regulations. The Environmental Protection Agency's studies have yielded sufficient information to date to support the immediate promulgation of regulations for a number of toxic pollutants found in sludge. Where available information indicates that toxic pollutants may adversely affect public health or the environment, the regulations must be published within 18 months after enactment of the Clean Water Act Amendments of 1983. In the case of toxic pollutants for which available information is not sufficient at the present time to determine the need for regulation, EPA must collect the needed information and publish regulations within 30 months of enactment.

The section requires EPA to develop some regulations in advance of others in recognition of the urgent need to protect public health and the environment as expeditiously as possible from exposure to those toxic pollutants about which EPA has gathered sufficient information to support rulemaking. A second regulatory phase was established to ensure that EPA's regulations comprehensively address all toxics of concern in a timely fashion.

In both phases of regulation, EPA is required to identify toxic pollutants for regulation which, on the basis of their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment. The section requires EPA to establish numerical limits for each such toxic pollutant unless a numerical limit is not feasible, in which case the Agency may pre-

scribe a design, equipment, management practice or operational standard. This provision is intended to give EPA a measure of flexibility, but the Agency is expected to justify any deviation from the presumptive requirement for numerical limits.

The regulations issued under this section must be adequate to protect public health and the environment from any reasonably anticipated adverse effects of toxic pollutants. EPA must consider both known and anticipated adverse effects of toxic pollutants; it should err on the side of caution in ensuring that the public is adequately protected from the effects of toxic pollutants.

The section requires compliance not later than six months from publication of the regulations. EPA may not extend the time for compliance by establishing an "effective date" which differs from the date of publication. Where more expeditious compliance is practicable, EPA shall require it.

Finally, this section was intended to expand the protection from toxic pollutants otherwise afforded to the public. Thus, where regulations or deadlines under this section are more stringent than those required by other laws, they shall override the requirements of other laws. Where section 405 regulations or deadlines are less stringent than those required by other laws, the requirements of other laws shall govern.

Section-by-Section Analysis

AUTHORIZATIONS

This section 2 of S. 431, as reported, continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1984 through 1987.

Section 2(a) amends section 104(u)(1) of the Clean Water Act to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring, and coordination. Particular attention should be given to priority water bodies such as Long Island Sound to insure adequate monitoring occurs.

Section 2(b) amends section 104(u)(2) of the Act to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works.

Section 2(c) amends section 104(u)(3) of the Act to authorize $1.5 million annually for the employment needs and forecasting program provided for by section 104(g)(2).

Section 2(d) amends section 106(a)(2) to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimina-

tion of pollution, including enforcement directly through appropriate State enforcement officers or agencies.

Section 2(e) amends section 112(c), authorizing $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act.

Section 2(f) amends section 314(c)(2) of the Act to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Section 2(g) authorizes $160 million per year for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

CHESAPEAKE AND NARRAGANSETT BAY PROGRAMS

The Administrator is required to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment desposition on the Bay, c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

The administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biennally thereafter.

The Administrator is authorized to make grants, at the request of Governors of affected states, for the purpose of studying the environmental deterioration in Narragansett Bay and development and implementation of a water quality management plan.

In order to quality for such a grant, a State is required to demonstrate to the Administrator that it will:

a) establish a committee to provide guidance on the development and implementation of mangement program;

b) coordinate research and pollution abatement programs which address adverse water quality factors;

c) establish methods for improving sampling data collection and a system for collecting, analyzing, storing and disseminating such data; and

d) implement water quality managmenet practices within three years of enactment of clean water act amendments.

The Administrator will approve the management program within three months of submission if these conditions are satisfactorily met. Federal grants may be used to finance program implementation costs. The Federal share shall not exceed 55 percent of those costs in any fiscal year with the remainder provided by non-Federal sources. State contribution in kind will satisfy the requirement of the state portion.

Approval of program plans by the Administrator will allow the State to utilize Federal funds, authorized at $1.5 million annually, not to exceed 55 percent of the costs of implementing the program in any fiscal year. Non-Federal sources provide the remainder of the cost.

Management of the Chesapeake Bay Program has been assisted by a State/Federal committee, including water quality officials from the major states in the Chesapeake Bay Basin. Implementation of the results of this Chesapeake Bay Study will require a partnership between the Federal government and the individual States. Because of the involvement of water quality managers in guiding the policy and program decisions of the Chesapeake Bay Program, the recommendations are likely to be more realistic and the managers are likely to be more committed to implementation of the results.

The findings of the Chesapeake Bay Program underscore the fact that the Chesapeake Bay is an ecosystem which ignores State boundaries. In addition to individual State commitments to implementation of the Chesapeake Bay Program recommendations. The States and the Federal government must make the commitment collectively to continue interstate communication, cooperation, and coordination on the Chesapeake Bay.

In an unusual, and perhaps unprecedented way, the U.S. Environmental Protection Agency relied on the State/Federal Management Committee to set program directions and make policy decisions. The Chesapeake Bay Program Management Committee is an excellent model for Federal/State cooperation in environmental research/management studies.

The Chesapeake Bay Program was initially structured as a research program with little or no emphasis on management implications. Preliminary results of the research showed that the orientation of the research scientists had been to describe the current conditions of the Bay in objective, quantitative terms rather than to point out problems, explore causes, and suggest solutions. The Chesapeake Bay Program Management Committee members, particularly the State water quality managers, insisted that the scientific researchers had a responsibility to tell them what needed to be done to reverse the declining resource trends which they had identified in the Bay.

Several products of the Chesapeake Bay Program resulted from this pressure by the Management Committee which were not initially conceived when the Chesapeake Bay Program began.

1. The synthesis of the findings of 45 individual scientific research reports into a single report which "pushes" the science to suggest management implications.

2. A comprehensive report characterizing the overall environmental health of the Bay through a statistical analysis of trends

and the current condition of many water quality and fisheries productivity parameters.

3. A final Management Report recommending actions to maintain and improve the health of the Bay.

The success of the Chesapeake Bay Program so far, in maintaining the support of Congress and the States, can be, in large part, attributed to the Management Committee. The future likelihood that the Chesapeake Bay Program recommendations will be implemented is probably due almost exclusively to the Management Committee. By their intensive participation during the Chesapeake Bay study, the State and Federal managers have shaped a product that reflects their needs, and is something they can readily take action on.

COMPLIANCE DATES

This section extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations or nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

New section 302(b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1987).

These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

The Clean Water Act currently mandates that industry achieve effluent limitations based on BAT for all toxic pollutants, and BCT for conventional pollutants, no later than July 1, 1984. BAT for

nonconventional pollutants must be achieved by three years after promulgation but no later than July 1, 1987.

These target dates were enacted in the expectation that the Environmental Protection Agency would promulgate guidelines in a timely fashion for the 26 major industrial categories to be regulated. The Agency has not met this expectation. Only eleven categorical standards have been promulgated. Under court order, the Agency is now required to promulgate all remaining standards by the end of 1984.

It will be impossible for many of these 26 industries to meet the 1984 compliance deadline. As documented in hearings before the Subcommittee on Environmental Pollution earlier this year, most industries require three years after promulgation of effluent limitation guidelines to design and construct necessary facilities. This section incorporates this three-year period into law.

In extending these compliance deadlines, the Committee emphasizes that dischargers are to comply with technology standards as expeditiously as practicable, regardless of the outside limits proscribed by this legislation.

Section 301(b)(3)(A) is intended to allow a discharger a reasonable amount of time to alter existing BPT treatment equipment or install new or additional treatment where necessary to meet more stringent BPT discharge requirements. Dischargers who had never previously received a permit would be required to meet the new BPT effluent limitations upon commencement of discharge. For previously permitted discharger compliance should be required as soon as practicable. In some cases, where the treatment facilities in place are capable of meeting the new limitations, this may require immediate compliance. Additional time to meet new limitations should only be given where the level of control required by the new limitations is substantially greater than that required by the existing permit or where the new limitations are based on new or significantly different control technology.

New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the Act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) have not been established or where limitations in addition to the guideline are necessary to control pollutants or wastestreams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a wastestream controlled by an effluent limitations guideline is combined with a process wastestream or a non-process wastestream, such as non-contact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged wastestream is controlled by a combination of both a guidelines based limitation

and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

This section establishes restrictive conditions on the qualifications of applicants for a section 301(h) waiver and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge waiver, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to insure the control of toxic pollutants at the time of application.

The applicant must also be providing a minimum of primary treatment of their municipal effluent, including disinfection where appropriate, at the time the waiver becomes effective.

Conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

No discharges should be permitted into saline estuarine waters which do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters, or do not meet applicable water quality standards or other standards necessary to support aquatic protection or recreational uses. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges. The presence of a balanced indigenous population is to be determined by comparison with the shellfish, fish and wildlife population of an estuary of similar physical, tidal, and geographic characteristics.

Section 301(j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) waiver, in which to apply for such a waiver in its own right. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency, to apply for a waiver under section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for waiver by the Orange County Sanitation District and thus the district did not apply during the period allowed by the 1981 amendments.

The Irvine Ranch Water District has made a legitimate case for special consideration, but the amendment is intended to exclude any other opportunities for application for waiver under this provision. The only special consideration provided to the District is the opportunity to apply for the waiver. Prior to its discharge into the ocean, either through its own outfall or through Orange County

Sanitation District's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmenal Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a waiver.

WATER QUALITY AFTER THE ATTAINMENT OF BEST AVAILABLE TECHNOLOGY

This section modifies sections 302, 303, 304, and 305 of the Act, to provide for the development of water quality based effluent limitations after the implementation of best available technology (BAT) and the designation of State water quality standards consistent with the objectives and goals of the Clean Water Act.

States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision.

(1) Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1983, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act amendments of 1983, on methods of establishing criteria with biomonitoring assessment techniques.

(4) Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

Section 303(c)(2) of the Clean Water Act is amended by incorporating provisions based on existing water quality standard regulations and the stated goals and objectives of the Act, restricting the downgrading of State water quality standards. In revising existing standards or adopting new water quality standards, States are not to adopt uses that would require less stringent criteria than those in existing standards unless a State demonstrates that such standard is unattainable. A new or existing use is regarded as attainable unless natural background levels of pollutants or irretrievable man-induced conditions in the water body preclude its achievement, or where achievement of the standard through controls more stringent than technology standards required by the Act would result in substantial and widespread adverse social and economic impact. States are required to upgrade use designations to reflect the level of water quality actually being attained where currently the water quality standard includes a less protective or beneficial use.

To demonstrate that a use is unattainable a State must submit to the Environmental Protection Agency a detailed analysis and supporting data. Under the October 1982 proposed regulations, while a use attainability analysis is subject to EPA review and approval, deference would be given to the State analysis and determination. In any event the Agency should take quick action on any State's proposed revision of its water quality standards, and not prolong review. To the extent consistent with sections 303(d)(1)(D) and 316(a), the provisions for downgrading use designations also apply to thermal water quality standards.

The amendments to section 303(c)(2) also codify a portion of the existing water quality standards regulations required by current law, under which States must implement an antidegradation policy which would assure that existing uses and the level of water quality necessary to support those existing uses shall be maintained and protected and that where existing quality exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality will also be maintained and protected. In this context, protection means no injury to or interference with the existing use or quality. The only case where such existing levels need not be maintained is where the State finds, subject to the intergovernmental coordination and public participation provisions of its continuing planning process, that lower water quality is necessary to allow economic or social development essential to the area, that there are no feasible and prudent alternatives to such water quality impact, and that all practicable measures to control point and nonpoint sources to limit such effects on water quality will be taken. The States shall provide for an adequate margin of safety in establishing water quality criteria, in any case where such degradation is allowed. No degradation at all is allowed in outstanding National resource waters such as those in National or State Parks, wilderness areas, wildlife refuges, wild or scenic rivers, and other waters of exceptional recreational or ecological significance.

Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or

maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water body has been identified under new section 305(c)(1)(B). For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality, providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

Ordinarily, State water quality standards established or revised under section 303 designate the uses specified in section 101(a)(2) of the Act, and if implemented through adequate criteria, waste load allocations, and effluent limitations in permits, will protect the level of water quality addressed by section 302(a). The Administrator is to use the authority of section 302(a), however, where compliance with best available technology requirements or the State water quality standards process are not attaining this level of water quality, due to point sources.

Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pollutants, for a single period not to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capabiity of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 302(a).

New section 304(l) requires the Administrator to promulgate within three years effluent limitation guidelines for industrial categories for which guidelines have not been promulgated prior to enactment of this bill. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants. In this use, "significant amounts" does not require the Administrator to make any determination of environmental harm; any non-trivial discharges from sources in a category should lead to effluent guidelines. This requirement does not effect the Agency's obligations to publish effluent guidelines under the toxic pollutant Consent Decree.

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the administrator should not require pretreatment of conventional pollutants by indirect dischargers to allow the treatment works to meet the conditions of their permits. The Committee recognizes that in such circumstances the burden of correction of the problem may more appropriately lie with the publicly owned treatment works itself through adjustment of its facilities or operation. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

CIVIL AND CRIMINAL PENALTIES

This section amends section 309 of the Clean Water Act relating to civil and criminal penalties.

Presently the Clean Water Act provides two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance by the violator or the Administrator may bring a civil action in the appropriate United States District Court for penalties and injunctive relief.

These amendments would allow the Administrator a third option: to assess civil penalties of up to $10,000 per day (not to exceed $75,000 total). Under this approach, a violator would be given notice and an opportunity for a hearing and if dissatisfied with the final assessment he would be able to seek review in a United States District Court. Administrative hearings shall not be subject to the requirements of section 554 or 556 of title 5, United States Code. The Administrator may, however, invoke the procedures set forth in those sections. In either case, any court review would be a *de novo* trial proceeding. The bill specifies certain factors which must be considered by the Administrator when the penalty is assessed. If not paid, assessed penalties would be subject to collection actions brought by the Attorney General in United States District Court.

The addition of administratively assessed civil penalties as an enforcement tool gives the Agency more flexibility to deal with noncompliance situations. A nonpenalty administrative order may be ineffective in resolving the problems and yet the option of taking judicial action may be unreasonably costly, burdensome, and time consuming for all the parties involved given the nature of the violation involved.

The Agency's experience to date with assessing similar civil penalties existing under other environmental statutes (CAA, FIFRA, TSCA, SWDA) indicates that this option will give EPA more enforcement flexibility, lead to speedier compliance, and assure due

process without the expense and delay of a judicial enforcement action.

These amendments would also increase the daily maximum civil penalty that may be judicially imposed under section 309(d) of the Clean Water Act from $10,000 per day to $25,000 per day. This is consistent with the provisions of the Clean Air Act and the Resource Conservation and Recovery Act and strengthens existing enforcement mechanisms.

Knowing violations of the Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Clean Water Act to deter these violations.

These amendments would elevate penalties for knowing violations of the Act to the felony level and add criminal sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substance which causes or can reasonably be anticipated to cause personal injury or property damage.

The addition of these criminal penalties will, put violations of the Act on the same level as violations under RCRA. Currently, a knowing discharge onto the ground of hazardous wastes could subject the discharger to felony sanctions under RCRA. However, the same discharge into a sewer system or a POTW would only subject the discharger to the misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems or POTWs. The addition of these criminal sanctions will aid in protecting these sewer systems and POTWs in which substantial Federal monies are invested.

Strong public support exists for aggressive enforcement action in cases of environmental misconduct. The addition of criminal sanctions to the Act for knowing violations of the Act will reflect this public concern and should dispel any perceptions that a knowing violation of the Act is not a serious offense.

PARTIAL NPDES PROGRAM APPROVAL

This Section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Elimination System program to a State under certain conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing five years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this second option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event

the Administrator withdraws approval of a State-operated program, the entire program must be returned to the Federal Government.

Current law with respect to the assumption of NPDES program authority by States has been interpreted to require the immediate assumption of the entire NPDES program as it is administered by EPA. Consequently, States with wastewater permitting responsibilities divided among more than one agency or with resource difficulties, either of which limits the State from assuming the entire program, have been precluded from assuming the NPDES program.

For example, the State of Texas divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. While the Texas Department of Water Resource, which does the vast majority of permitting, has sought NPDES assumption, the Texas Railroad Commission, which is responsible for oil and gas exploration and production permitting, has not yet sought assumption. Current law has thus prevented the Texas Department of Water Resources from obtaining assumption of the program.

The Committee believes States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. Current law works against both of these objectives. For this reason, the bill includes these modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

NPDES PERMIT TERM AND REOPENER

This section amends section 402 relating to permit terms and reopeners. The current five-year limitation on NPDES permits is changed to a maximum of ten years for permits which do not include a waiver or modification of any otherwise applicable requirement under section 301 (e), (g), (h), or (m) of the Act. The limitation on permits which do include such waivers or modifications remains at five years.

Section 402 is also amended to provide for prompt modification of NPDES permits whenever more stringent requirements or new pollutant controls are established under section 301, 302, 303, 304, 307, 403, or 405 of the Clean Water Act which would relate to individual permit requirements.

Under the National Pollutant Discharge Elimination System established in section 402, point sources discharging pollutants to navigable waters must apply for and receive permits authorizing such discharges. These permits are issued either by the Environmental Protection Agency or by States which have been delegated the permit program. The current maximum term for an NPDES permit is five years.

In the initial years of this program, the Environmental Protection Agency and the States issued approximately 65,000 permits. Most of these have now expired, resulting in an enormous backlog of permits to be renewed. In addition to this burden, EPA also receives about 2,000 applications for new permits each year.

By extending the permit term from five to ten years for permits which contain no waivers or modifications of otherwise applicable

requirements, the backlog and the annual burden will be diminished with no detrimental effect to the clean water goals of the Act.

The second part of the amendment directs EPA and the States to reopen and modify any permit, ten-year or otherwise, if more stringent requirements or new controls are established.

Nothing in this provision infringes on the Agency's ability to establish shorter permit terms where it deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits with toxic limitations for the first time, it is expected that EPA will set maximum permit terms of less than ten years for certain dischargers.

JUDICIAL REVIEW AND ATTORNEY'S FEES

This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

Section 10(a)(1) provides that proper venue for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

Currently section 509(b)(1) provides for venue in the Circuit Court of Appeals of the United States for the Federal judicial distict in which the applicant "resides or transacts such business". This phrase is inherently ambiguous because the word "such" has no antecedent. The legislative history of this phrase is also ambiguous and is not consistent with the plausible interpretation, urged by the Department of Justice, that the words "such business" refer to business which is directly affected by the action which is the subject of the application for review. The two courts of appeals which sought to construe this phrase, the Fifth Circuit in *Tenneco Oil Co.* v. *EPA*, 592 F. 2d 897 (1979), and the Eighth Circuit in *Peabody Coal Co.* v. *EPA*, 522 F. 2d 1152 (1975), ultimately avoided ruling on its meaning and proper venue for section 509(b) cases remains unsettled. In order to eliminate, or at least reduce, the potential for threshold litigation over proper venue, the Committee amendment changes the venue provision so that the language conforms to the reading of current law which has been suggested by the Department of Justice. The intention of the Committee is to allow the filing of an application for review in the circuit in which the applicant resides, i.e., has his principle place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the

proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

Section 10(a)(2) changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period. The Committee has previously considered this issue in a different but similar context (Senate Report No. 97-666 at pp. 94-5) and has concluded that one hundred and twenty days is a reasonable period within which to require the filing of an application for review.

Section 10(b) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

Section 10(c) limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. The Committee wishes to emphasize that this process is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intention of the Committee that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. In *Sierra Club* v. *Gorsuch*, 672 F. 2d 33 (D.C. Cir 1983), *rev'd sub nom., Ruckelshaus* v. *Sierra Club,* 51 U.S. L.W. 5132 (July 1, 1983), the court of appeals held that it was "appropriate" to award attorney's fees under the Clean Air Act to the petitioner even though the government prevailed on all issues. The

Committee does not believe that it is reasonable or appropriate to compel either the government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues. Accordingly, these amendments would limit the awarding of costs under the Clean Water Act to prevailing or substantially prevailing parties.

These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor does the Committee intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

In addition, the Committee recognizes that a party may "prevail" by achieving a successful settlement.

NONPOINT SOURCE POLLUTION

This section provides funds to support management programs to control nonpoint source pollution. Requirements for these programs have not been included in S. 431, but it is the Committee's intent to develop an amendment to the bill containing such requirements before the bill is considered by the Senate.

Committee hearings on nonpoint source problems confirmed that pollution from nonpoint sources is a significant nation-wide problem that requires immediate attention. Nonpoint source pollution, which may include runoff from paved areas, agricultural and silvicultural lands, mining areas, and construction sites, contributes large amounts of toxic metals and organic pollutants, fertilizers, pesticides, sediments, and other important pollutants to the nation's waters. In some areas, nonpoint sources are the major cause of water quality problems and, unless management programs are implemented, will preclude attainment of water quality standards and the goals of the Act. As additional reductions in pollutant discharges are achieved by point sources, the relative importance of nonpoint sources will increase.

The hearings also established that substantial planning to reduce pollution from nonpoint sources has already been accomplished under Federal and State programs and that future emphasis should be on implementation of control strategies. The Committee proposal will be directed at expediting the adoption and implementation of control measures.

S. 431, as reported, contains a significant funding level of $150 million per year for four fiscal years to assist in the nationwide implementation of nonpoint source control strategies.

STORMWATER RUNOFF FROM MINING OPERATIONS

This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from mining operations or oil or gas exploration, production, processing, or treatment operations are covered by this provision. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of con-

veyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, overburden, raw materials, toxic pollutants, hazardous substances, or oil or grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection. Examples of contamination include heavy metals or suspended or dissolved solids from process wastes or disturbed soils, salts, surfactants, or solvents used or produced in the mining or oil and gas operations, or contaminated runoff from operations upstream. Runoff exempted under this subsection from effluent limitations may still be subject to stormwater management practice requirements or other nonpoint source controls.

ANTI-BACKSLIDING

This section adds a new subsection to section 402 of the Clean Water Act, relative to renewal or reissuance of NPDES permits. Unless a previously permitted source can demonstrate that installation of required treatment facilities and adequate operation and maintenance of such facilities has failed to achieve the permitted effluent limitations, a renewed or reissued permit shall not contain less stringent effluent limitations, standards or conditions than in the previous permit. If such demonstration is made, the limitations in the renewed or reissued permit may reflect the level of control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or reissuance.

SEWAGE SLUDGE

The purposes of this provision are (1) to establish a new timeframe for promulgation of sewage sludge use and disposal criteria originally required by the 1977 amendments; (2) to require expedited regulation of problem contaminants; (3) to provide public health and environmental nationale for sludge criteria development for sludge criteria development, and (4) to establish deadlines for compliance with the sludge criteria.

The provision requires the Administrator to identify within six months of enactment of the Clean Water Act Amendments of 1983, which toxic pollutants may be present in sewage sludge, and may adversely affect public health or the environment. These toxic pollutants are those on which the Agency currently has available information on the toxicity, persistence, concentration, mobility, or potential for exposure on which to base use and disposal criteria.

Within 18 months of enactment, the Administrator is to publish regulations specifying acceptable management practices for sewage sludge containing these toxic pollutants and establish numerical limits for all identified uses of sludge adequate to protect public health and the environment. Compliance with these regulations is required no later than six months after their publication.

The Administrator is to identify within 18 months, those potentially harmful toxic pollutants which may be present in sludge that have not been identified in the first group of pollutants.

The Administrator is to publish regulations on management practices and numerical limits for each identified use for these pol-

lutants within 30 months of enactment. Compliance with these regulations is required no later than six months after their publication.

The Administrator may promulgate a design, equipment, management practice, or operational standard for toxic pollutants in the second group if it is determined feasible to prescribe or enforce a numerical limit.

INTERSTATE DISPUTE RESOLUTION

Section 402 of the Clean Water Act is amended to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will violate water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

New section 402(d)(2)(b) requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any violation of a water quality standard, adverse effect on public health, or other harm to the water quality of the downstream State would result from the issuance of the permit. If so, the Administrator must object to the issuance of the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b). Thus a State dissatisfied with the Administrator's decision could seek review in the U.S. Court of Appeals for the appropriate circuit.

In addition to the procedure under section 402(d)(2)(B) for resolving disputes over proposed permits, under new section 402(b)(1)(F) a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is adversely affecting the waters of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations under section 402(b)(5) and if they are not accepted, section 402(d)(2)(B) governs. The phrase "adversely affecting the waters of such State" means the type or level of effect which would lead a State to submit recommendations under section 402(b)(5).

A new section 511(e) is added, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism of section 402(d)(2)(B). Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants or contaminants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedure Act, whether such pollution is endangering public health or welfare or

causing or contributing to a violation of water quality requirements in the downstream State.

If the Administrator so determines, the Administrator must issue an order restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable. This is very broad authority, comparable to that under section 303 of the Clean Air Act or section 7003 of the Solid Waste Disposal Act for situations involving imminent and substantial endangerment. The Administrator should exercise great care in fashioning remedies under this authority. In addition to the adjudicatory hearing called for in section 511(e), the Administrator may wish to convene a more informal management conference involving the affected States and municipalities to frame the issues and facilitate a resolution. Such conferences would be similar to the enforcement conference under the Federal Water Pollution Control Act prior to 1972. The determination and any administrative order issued under section 511(e), however, would be the responsibility of the Administrator.

The question in both section 402(d)(2)(B) and section 511(e) is whether activities in one State adversely affect water quality or public health in another State. The phrase "other demonstrated harm" is limited to water quality-related concerns. Economic or other competiton between States is an inappropriate motive and impermissable grounds for the use of either section 402(d)(2)(B) or section 511(e). In weighing the equities under either section, the Administrator should not allow the imposition of controls in the upstream State, at the instance of a downstream State, which the downstream State is not willing to impose on similar sources within its boundaries affecting the same water body.

PRESERVATION OF OTHER RIGHTS

This section amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits any rights or liabilities under State common law, nor the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal Statues. In addition, new subsection (e)(4) makes it clear that State law applies in cases of interstate pollution.

The first sentence of this new paragraph provides that any person injured by an act or activity which might constitute water pollution or be regulatable under the Clean Water Act, may seek and be granted relief provided under the statutory or common law of the State in which such person resides or in which the claim arose. Such relief may be granted only to the extent provided under such State law. This sentence supports the declaration in subsection (e)(2) that State common law is nct displaced or preempted by the Clean Water Act.

The second sentence of section 505(e)(4) provides that States or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which

the cause of action arose. This will provide access to a neutral forum, the Federal courts for resolution of interstate disputes, for States and municipalities which are not now covered by 28 U.S.C. 1332, the statute granting jurisdiction to Federal courts based on diversity of citizenship of the parties.

HAZARDOUS WASTE PRETREATMENT STUDY

Section 516 of the Clean Water Act is amended to require the Adminstrator of the Environomental Protection Agency to submit to Congress a report on hazardous wastes excluded from regulation under the Solid Waste Dispoal Act, specifying the types and quantities of such wastes and including recommendations on whether or not existing law is adequate to protect human health and the environment from dangers associated with such wastes. The study is to be submitted within two years of enactment of the Clean Water Act Amendment of 1983.

The hazardous wastes at issue are those specifically exempted from regulation as waste mixtures that pass into publicly owned treatment works. There is a potential that such wastes can have an impact on public health and the environoment. The Committee believes that this study is necessary in order to determine if additional legislative controls are needed.

HAMPTON, N.H. AD VALOREM TAX AMENDMENT

This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977. The Committee finds that Hamption's ad valorem tax system was in place and in operation as of this date, and therefore is deemed to have been dedicated as of this date. The Committee also finds that Hampton developed a user fee tax system only under duress, and such system was never implemented. It is the Committee's understanding that Hampton's ad valorem tax meets all the remaining requirements of section 204(b)(1) and other related regulations, and the Agency is to review the system for compliance.

Cost of Legislation

Section 403 of the Congressional Budget and impoundment Control Act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement was unavailable at time of filing.

Evaluation of Regulatory Impact

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires effluent limitations to be established to protect the nation's waters from additional degradation due to

toxic pollutants. This is not new authority in the Clean Water Act but simply augments authority that has existed since 1972. It is not expected that there will be any new regulatory burden created by this clarification of existing law.

Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of S. 431 no rollcall votes were taken.

The Committee vote to report S. 431 is announced as 14–0.

Voting in the affirmative to report the bill from the full Committee were Senators Stafford, Baker, Domenici, Chafee, Simpson, Durenberger, Humphrey, Randolph, Bentsen, Burdick, Hart, Moynihan, Mitchell, and Baucus.

Hearings

The Subcommittee on Environmental Pollution held hearings in both the 97th and 98th Congress on the nonmunicipal portions of the Clean Water Act. Over two thousand pages of testimony and exhibits have been included in the hearing record. All hearings have been conducted in Washington, D.C.

The Subcommittee had three mark-up sessions, June 14, 16, and 22. The Full Committee conducted 1 mark-up session and on June 28, 1983, voted to order the bill reported.

At the time the bills were reported the following bills were pending before the Committee:

S. 432. Clean Water Compliance Date Extension Act of 1983.

S. 1536. A bill to amend the Clean Water Act relating to discharges into ocean waters.

The issues raised by these pieces of legislation are addressed in S. 431.

ADDITIONAL VIEWS OF SENATORS SIMPSON, ABDNOR, BURDICK, AND SYMMS

Since the decision of the Supreme Court in the case of *Milwaukee* v. *Illinois*, 451 U.S. 304 (1981) (generally referred to as *"Milwaukee II"*) various attempts have been made to overturn that decision and to "revive" the "federal common law of nuisance". At our hearings on S. 431, this Committee received considerable testimony on the feasibility and desirability of resuscitating federal common law, and, after weighing the arguments on both sides, wisely chose not to attempt to do so.

The bill now reported by the Committee does, however, contain provisions which are intended to address problems which it apparently fears the *Milwaukee II* decision may cause. Section 16 is intended to improve and add to existing procedures for the resolution of interstate disputes. Section 17 is intended to insure that state law is not automatically preempted by the Federal Clean Water Act. The purpose of these two sections is laudable, but unfortunately the language of both sections is overly broad and may well create some of the same disruptive and counterproductive effects that the Committee sought to avoid when we chose not to overturn the *Milwaukee II* decision.

Three aspects of Sections 16 and 17 are particularly troublesome.

Section 16(a) would allow a state to block the issuance of an NPDES permit by another state by showing to the Administrator of EPA that the issuance of such permit will result in "any violation of a water quality standard of the affected state, adverse effect on public health, *or other deomonstrated harm to the interests of the affected state . . .*" (emphasis added). This language appears to allow a downstream state, for reasons which may be purely economic or political, to block the issuance of a permit to a facility which might well satisfy all permit requirements applicable in the downstream state and pose no threat whatsoever to the water quality standards or public health of such state. Clearly a downstream state should have some means of protecting itself from water quality violations or adverse effects upon public health, but it is equally clear that allowing downstream states to block the issuance of permits which "harm" their "interests" goes far beyond the protection or water quality and creates an enormous potential for abuse and unfair discrimination against out-of-state companies.

Section 16(c) would allow a State or municipality, the water quality of which is adversely affected by pollutants or contaminants from another state, to petition the Administrator under Section 511 for a restraining order or other appropriate relief. The Administrator would be required to determine whether such pollution or contamination causes "demonstratable harm", and upon making a positive determination he would be required to take appropriate action which would then be judicially reviewable. A State could ini-

tiate this petition process against a permitted facility in another state even when the downstream State has previously challenged the permit under Section 402 and the permit has been upheld. Section 16(c) would thus provide a State seeking to block or revoke a permit in another state with a wholly unnecessary "third bite at the apple", but, more critically, it would provide a mechanism for imposing Federal regulation upon nonpoint sources of water pollution, including agriculture, silviculture, and livestock operations. Pollution from nonpoint sources is a serious problem which deserves attention, but attempting to solve it through an ad hoc, adversary process, the product of which would then be litigated in Federal court, seems to us a very unlikely approach to produce a "solution" that would please anyone and it is certain to put an enormous strain on the administrative and legal resources of both EPA and the states involved. It may also result in the reallocation of water resources between the states. Appropriate control of nonpoint sources will require close and prolonged cooperation between the states and EPA and possibly the most useful action EPA can perform at this point is to provide incentives to the states and assist them in their efforts to deal with the problem. This amendment would only generate confrontation between the states and coercion by the Federal Government. Another troublesome aspect of this provision is that it would allow not just other states, but municipalities and Indian Tribes to initiate an action against a state, further increasing the volume of litigation which will assuredly result.

Section 17 of the bill purports to simply reserve existing legal rights under State common law or State or Federal statutes—an unexceptionable purpose. However, the new paragraph (4) which would be added to Section 505(e) of the Clean Water Act by Section 17 would go well beyond preserving existing rights. Apparently, it was intended only to allow states access to Federal district court on the same basis and to the same extent now afforded an individual in diversity of citizenship cases, but paragraph (4) could also be interpreted as creating a wholly new Federal cause of action in cases involving water pollution, which would of course entail all of the problems associated with the "Federal Common Law of Nuisance", a most undesirable result. At the very least, the proposed language would require wasteful litigation before its meaning could be determined.

As previously noted, the basic intention of Sections 16 and 17 is laudable. However, the legislative execution of this intention is so badly obscured and laboriously presented that unless the language is substantially rewritten, that fine intention will be thoroughly frustrated and far more problems will be created than will ever be resolved. We have enough confusion in the law without resurrecting in another form the Federal Common Law of Nuisance. It is better to leave it buried with other outmoded and unnecessary legal precedents.

ALAN K. SIMPSON.
QUENTIN N. BURDICK.
STEVE SYMMS.
JAMES ABDNOR.

SUPPLEMENTAL VIEWS OF SENATOR SYMMS

Although I support the Committee passed bill, I believe the Committee missed an excellent opportunity to enhance the goals of the Clean Water Act and the regulations that accompany it. As originally written, S. 431 contained a provision which would provide a publicly owned treatment works (POTW) with a chance to develop and implement their own alternative pretreatment program, in lieu of the national categorical standard approach. The EPA Administrator and many members of the Committee supported this approach, since it would reward POTW's that had developed the most successful pretreatment programs, and allow them to continue their local programs as a model to other POTW's that were not as advanced. It is important to note that under the provision, there would be no decrease in water quality.

The alternative pretreatment provision, had it been retained in S. 431, would have provided those POTWs with the legal, financial and technical capability to develop and implement a pretreatment program designed to address their local geographic, economic and environmental needs. Under this strict provision, which required the approval of the EPA Administrator, no more than 75 POTWs around the nation were expected to meet the rigorous qualification requirements for the privilege of administering their own pretreatment program.

Under the existing regulatory framework, any POTW desiring to apply for the alternative program would have been under a strict time frame to make its application. The POTW would have to demonstrate that it had in effect an EPA-approved pretreatment program, that the POTW had the ability to enforce its standards, and that it had the technical ability to operate and monitor the alternative approach.

As I stated, only 75 POTWs were expected to qualify. The remaining POTW's, approximately 1,900 in number, would have been subject to the standards established under the national categorical approach.

I remain committed to the need for an alternative to the rigid national categorical standard approach. Those POTWs that can demonstrate a sophistication to develop and implement their own pretreatment programs should be permitted to do so as long as the resulting water quality is the same. The existing approach is unnecessarily cumbersome and elaborate, and, in many cases, results in a different standard for the same toxic pollutant for various industrial categories. This national approach was developed in a courtroom. It has no relevancy to the true environmental conditions of an area, unlike the alternative approach that is tailored to the specific industrial base and environmental needs of an area.

During our hearings on the issue of pretreatment, the Committee was told that the solution to the hardships imposed by the categori-

cal approach would be accomplished by the granting of removal credits. Further testimony on this process, however, illustrated the attendant legal, financial and administrative burdens inherent in the removal credits program itself. No program is successful if there are few or no participants. Many POTWs, have stated their reluctance to take advantage of this program because of the complexities that accompany it.

In addition, the secondary costs imposed by the categorical approach, as well as the direct costs, far outwiegh the environmental benefits it achieves. Nonetheless, the categorical approach, although it is inflexible, may be necessary to address areas where progress has not been great. The categorical standards become less effective and clearly more expensive and burdensome in areas that have demonstrated that they can effectively pretreat waste.

GREAT PROGRESS HAS BEEN MADE

I am very troubled over the impression left during mark-up of S. 431 that little progress has been made in the pretreatment of wastewaters. If this is true, it is directly attributable to the federal government. Before Public Law 92-500, many of the larger POTWs had developed programs to pretreat industrial wastewaters. More importantly, the programs were in place and running smoothly.

Currently, all POTWs have EPA-approved pretreatment programs or have submitted a program to EPA for approval. Proponents of the categorical standards approach argued before the Committee their concerns that anything less would jeopardize water quality. The facts, however, belie this argument. Simply stated, many current local pretreatment standards including those in Boise, Idaho, are more stringent than the national categorical standards. Even EPA Administrator Ruckelshaus highlighted this fact when he testified before the Committee, and raised his concerns that EPA would both over- and under-regulate using the categorical approach.

The record is clear. Local officials are in the best position to develop pretreatment programs to protect water quality and the operation of their treatment facilities. They are professionals, who, in the absence of federal guidelines, regulations and programs, have seized the initiative and competently attacked this critical environmental problem.

STRENGTHS OF A LOCAL OPTION

In the course of our hearings and mark-ups on S. 431, few substantive arguments against the alternative approach were made, and I remain convinced that the valid concerns that were raised can be addressed with some modifications to the amendment. Concerns such as resource scarcity, inequity, delays, removal credits and the preservation of water quality, POTW operation and sludge quality were invoked as reasons against the provisions.

The alternative pretreatment approach would accelerate the Act's objectives because it would allow local problems to be addressed with local solutions. This tailored approach would be less costly and technically more relevant to the particular industrial base and environment. More importantly, it would utilize programs

currently in place that are administratively feasible and easily enforceable. Perhaps the most critical point, however, is the environmental soundness of such a program. Through the process of targeting local conditions, we would be responding to the immediate problems of an area, instead of relying upon a national standard that may or may not be relevant to an area's water quality.

Resource limitations are a legitimate concern in any situation. Under the alternative pretreatment provision, however, the strict qualifying criteria and tight time frames for the submittal of the application itself would alleviate these concerns. Ironically, a local alternative would allow EPA and the states to target existing resources to those areas of the country that were unable to qualify for the local permit modification.

If resource limitations are important, and they are, I think the Committee should be deeply concerned over EPA's ability to carry out the categorical program affecting 2,000 POTW's, especially when EPA cites limited resources as its reason for not being able to review 75 POTW programs for adequacy. The fact is that EPA is overstating the resources necessary to implement the alternative pretreatment approach. Not only must EPA approve POTW's programs anyway, but the lion's share of the resources necessary to implement the alternative approach would come from the POTW itself, as it is charged with proving that it can carry out a local program as effectively as one which would be mandated by national categorical standards. Further testament to EPA's overstatement of resources is that in the case of Boise, Idaho's program, EPA's review took only forty-eight hours to report to the Committee that Boise was a likely candidate for a permit modification, and, in this instance, I doubt that more than a few man-hours were spent making the determination.

Possible delays in implementing effective controls were also cited as a reason to delete the issue of pretreatment from Committee consideration. But this concern is unfounded considering not only the number of effective local programs already in place, but also the Agency's continuing failure to finalize all categorical standards. In all likelihood, we can anticipate lengthy administrative and legal challenges to existing and proposed federal standards. Unfortunately, in light of these delays, it would be unfortunate if the Congress does not adopt language to allow at least the most effective local agencies the latitude to continue implementation of their own, more responsive programs.

SUMMARY

The Committee bypassed a major opportunity when it did not act on the alternative pretreatment approach embodied in the original draft of S. 431. It is my intention to continue working with the Chairman and ranking Minority Member and the EPA in an effort to draft language that will address this lingering issue. The key question remains. *Who is in the best position to control toxic wastewaters?* I believe, given the weight of evidence and actions, that it is the local officials who are in the best position.

Local control does not mean less control. Local control means the expeditious achievement of the Act's objectives at the least econom-

ic costs associated with meeting these objectives. Local control also means addressing local problems with local solutions to meet national pretreatment objectives. In the long run, it means better, more responsive programs that acknowledge the true role of local government in the federal-state-local partnership.

STEVE SYMMS.

CHANGES IN EXISTING LAW

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RESEARCH AND RELATED PROGRAMS

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

SEC. 104. (a) * * *

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987,* for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982, *and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981,

[and] $1,500,000 for fiscal year 1982, *and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

* * * * * * *

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980 $75,000,000 per fiscal year for the fiscal years 1981 [and]; 1982, *1984, 1985, 1986, and 1987*

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

* * * * * * *

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and] $7,000,000 for the fiscal year ending September 30, 1982, *and $7,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* to carry out sections 109 through 112 of this Act.

* * * * * * *

CHESAPEAKE AND NARRAGANSETT BAYS

SEC. 117. (a) The Administrator shall continue the Chesapeake Bay program and shall establish and maintain in the Environmen-

tal Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

(1) collect and make available, through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter "the Bay");

(2) coordinate all Federal research projects pertaining to the Bay;

(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(4) conduct research on the impact of natural and man-induced environmental changes in the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan develop pursuant to the Chesapeake Bay program (hereinafter "the plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1983, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

(c) Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of a

Federal grant under subsection (b) and biennially thereafter, report in conjunction with EPA to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program.

(d)(1) The Administrator shall, at the request of the Governor of an affected State, after consultation with appropriate Federal and State agencies and other interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay, as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve such Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within 3 months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—

(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Narragansett Bay, to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Narragansett Bay's water quality;

(B) coordinate, subsequent to a review of presently ongoing research, research and abatement programs that will most efficiently address those principal factors having an adverse effect on the Narragansett Bay's water quality; and

(C) undertake, subsequent to an analysis of all environmental sampling data being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and, as soon as practicable but within three years after enactment of the Clean Water Act Amendments of 1983, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in such Bay and to improve such Bay's water quality.

(3) If the Administrator approves a program submitted under paragraph (2) of this subsection, he shall finance the costs of implementing segments of such program, except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during the fiscal year.

(4) Any State that avails itself of the benefits of this subsection shall, not later than two years after issuance of a Federal grant under this subsection and annually thereafter, report to the Admin-

istrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.

(e) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (a);

(2) $10,000,000 fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (b); and

(3) $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (d).

* * * * * * *

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations (under authority preserved by section 510), or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315), that such elimination is technologically and economically achievable for category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act;

(B)[1]

(C) [not later than July 1, 1984,] with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph[;] *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987;*

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) [not later than July 1, 1984,] *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987, compliance with* effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph *as expeditiously as practicable but in no case* [not]

[1] Subparagraph (B) was repealed by Public Law 97-117.

later than 3 years after the date such limitations are established, or not later than [July 1, 1984,] *three years after July 1, 1983* whichever is later, but in no case later than July 1, 1987.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1983, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1987.

* * * * * * *

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

[(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;]

(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of

toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the [permit.] *permit;*

(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. *Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works.* A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. *No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.*

* * * * * * *

(j)(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, *except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to discharge its sewage into another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may*

apply for a modification of subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1983;

* * * * * * *

WATER QUALITY RELATED EFFLUENT LIMITATIONS

Sec. 302. (a) Whenever, in the judgment of the Administrator, *or as identified under section 305(c)* discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of *public health,* public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

[(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

[(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.]

(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satis-

faction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a) * * *

* * * * * * *

(c)(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) *(A)* Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such critera shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods.

(C) In revising or adopting new water quality standards under this paragraph, a State (i) shall upgrade the designated use for a portion of the navigable waters to reflect the use actually being attained whenever the existing water quality standard specifies a use

that is less protective or beneficial than that which presently is being attained, and shall adopt new or additional criteria to protect such use; and (ii) shall not adopt uses that would require less stringent criteria than those in existing standards unless such State demonstrates that such existing standards are unattainable. For the purposes of this paragraph a new or existing use is attainable unless its achievement is precluded by natural background levels of pollutants or irretrievable man-induced conditions in the water body, or where achievement of the standards through controls more stringent than those required by section 301(b)(2) of this Act would result in substantial and widespead adverse social and economic impact. In no case shall a State adopt waste transport or equivalent functions as a designated use for any navigable waters.

(D) As part of its water quality standards program, each State shall implement a statewide antidegradation policy which shall, at a minimum, be consistent with the following:

(i) existing uses actually attained in a water body and the level of water quality necessary to support such existing uses shall be maintained and protected; and

(ii) the quality of waters whose existing quality exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate economic or social development essential to the area in which the waters are located, that there are no feasible and prudent alternatives to the water quality impact of such development, and that all practicable measures for point and non-point sources to reduce or offset such effects on water quality will be taken. In allowing such degradation the State shall provide for an adequate margin of safety in defining appropriate water quality criteria. In no event, however, may such degradation of water quality interfere with existing uses as required by clause (i). No degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks, wilderness areas, wild or scenic rivers, wildlife refuges, and other waters of exceptional recreational or ecological significance.

* * * * * * *

(d)(1) * * *

(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously

as practicable, but in no event later than three years after the establishment of such effluent limitation.

* * * * * * *

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) * * *

(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1983, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1983, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

* * * * * * *

(l) Not later than three years after the date of enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations providing guidelines for effluent limitations under subsection (b)(2) of this section and section 306 for categories of sources discharging significant amounts of toxic pollutants referred to in section 301(b)(2)(C), for which guidelines have not previously been published.

WATER QUALITY INVENTORY

SEC. 305. (a) * * *

* * * * * * *

(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1983, and revise biennially thereafter, an identification of—

(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and

which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).

* * * * * * *

FEDERAL ENFORCEMENT

SEC. 309. (a) * * *

* * * * * * *

[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State shall be published by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any affluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under

section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than one year, or by both.

(3) Any person who knowingly makes any false material statement, representation, or certification in any application, record, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccuate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(4) If a conviction is for a violation of paragraph (1), (2), or (3) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(5) For the purpose of paragraphs (1), (2), and (3), the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(6) For the purpose of paragraphs (1) and (2), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty, not to exceed [$10,000] *$25,000* per day of such violation.

* * * * * * *

(g)(1) In addition to any other relief provided, whenever on the basis of any information available to him the Administrator finds

that any person is in violation of section 301, 302, 303, 306, 307, 308, 318, or 504 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or in a permit issued under section 404 of this Act by a State, he may after notifying the State in which the violation occurs assess a civil penalty of not more than $10,000 per day of violation, not to exceed $75,000 in total.

(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Such hearing shall not be subject to the requirements of section 554 or 556 of title 5, United States Code.

(3) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(5) The Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(6) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That the discharge of pollutants which is penalized administratively under this subsection shall not be the subject of a civil penalty under section 309(d)

or section 311(b) of this Act in a civil action commenced by the Administrator.

* * * * * * *

CLEAN LAKES

SEC. 314. (a) * * *

* * * * * * *

(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and] $30,000,000 for fiscal year 1982 and, *$30,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987* for grants to States under this section which such sums shall remain available until expended. The Administrtor shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

* * * * * * *

NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 319. There are authorized to be appropriated for the purposes of implementing management programs for the control of nonpoint sources of pollution, to remain available until expended, $150,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987.

TITLE IV—PERMITS AND LICENSES

CERTIFICATION

SEC. 401. * * *

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a) * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program *or part of a permit program in accordance with paragraph (10) of this subsection,* for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State or the interstate com-

pact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

[(B) are for fixed terms not exceeding five years; and]

(B) are for fixed terms not exceeding ten years, unless a permit inlcudes a waiver or modification of any otherwise applicable requirement under sections 301(c), (g), (h), or (m) of this Act, in which case such permit shall be for a fixed term not exceeding five years;

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) shall be promptly modified whenever new or revised requirements under sections 301, 302, 303, 304, 307, 403, or 405 are established which are more stringent than any requirement in the permit or which control pollutants not limited in the permit and such modification implements these new or revised requirements;

[(D)] *(E)* control the disposal of pollutants into wells;

(F) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is adversely affecting the waters of such State and seeks a modification of such permit;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act, or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 in this Act;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which

the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatments works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307, and 308.

(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such submission upon a showing that—

(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and

(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or

(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represent a significant and identifiable part of the permit program in the State; and

(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, "a complete permit program," means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section [as to those navigable waters] *as to those activities and discharges* subject to

such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(h)(2) of this Act.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.

(d)(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2)*(A)* No permit shall issue **[**(A)**]** *(i)* if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or **[**(B)**]** *(ii)* if the Administrator within ninety days of the date of the transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine whether any violation of a water quality standard of the affected State, adverse effect on public health, or other demonstrated harm to the interests of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under sec-

tion 509(b) of this Act as the issuance or denial of a permit under section 402.

* * * * * * * *

(l)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, overburden, raw materials, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease.

(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Except as provided in this subsection, when a permit is renewed or reissued under this section, it shall not contain effluent limitations, standards, or conditions which are less stringent than the comparable final effluent limitations, standards, or conditions in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or reissuance).

* * * * * * *

DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (a) * * *

(d)*(1)* The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of

this subsection and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

[(1)] *(A)* identify uses for sludge, including disposal;

[(2)] *(B)* specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

[(3)] *(C)* identify concentration of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(2)(A)(i) Not later than six months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants which on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(ii) Not later than eighteen months after enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(B)(i) Not later than eighteen months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(i) and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.

(ii) Not later than thirty months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(ii) and establishing numerical limitations for each such pollutant for each such use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.

(iii) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2)(A), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(C) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.

* * * * * * *

TITLE V—GENERAL PROVISIONS

* * * * * * *

CITIZEN SUITS

SEC. 505. (a) * * *

* * * * * * *

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any *prevailing or substantially prevailing* party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e)*(1)* Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(2) Nothing in this Act shall be construed, interpreted, or applied to displace, preempt, or limit the rights or liabilities of any person under State common law.

(3) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

(4) Any person injured by an act or activity within the field covered by this Act may file an action and be granted relief which is provided under the statutory or common law of the State in which such person resides or in which the claim arose to the extent provided under such State law. A State or municipality may file an action in, or seek and receive removal to, a Federal district court in such State or the State in which the claim arose, in any case involving the application of State common or statutory law to an instance where a discharge of pollutants or other pollution arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality.

* * * * * * *

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a) * * *

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under

section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under section 301, 302, or 306, and (F) in issuing or denying any permit under section 402, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or [transacts such business] *transacts business which is directly affected by such action* upon application by such person. Any such application shall be made within [ninety] *one hundred and twenty* days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such [ninetieth] *one hundred and twentieth* day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer

such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.

* * * * * * *

OTHER AFFECTED AUTHORITY

SEC. 511. (a) * * *

* * * * * * *

(e) Any State or municipality the water quality of which is adversely affected by pollutants or contaminants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution or contamination endangers the public health or welfare, or causes or contributes to a violation of water quality standards or other demonstrable harm, shall issue an order restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In cases where the pollution complained of is discharged pursuant to permit, the petitioner must previously have exhausted relief available under section 402.

* * * * * * *

REPORTS TO CONGRESS

SEC. *516. (a)* * * *

* * * * * * *

(f) The Administrator shall, not later than two years after the date of the enactment of the Clean Water Act Amendments of 1983, submit a report to the Congress concerning hazardous wastes identified or listed under section 3001 of the Solid Waste Disposal Act which are excluded from regulation pursuant to subtitle C of the Solid Waste Disposal Act under regulations exempting mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. Such report shall specify the types and quantities of such hazardous wastes which are exempted pursuant to such regulations and shall include recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment from hazards associated with such wastes or whether regulation of such mixtures under subtitle C of the Solid Waste Disposal Act is necessary for such purpose.

GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d) (i), (l), and (k) 314,

315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, [and] $160,000,000 for the fiscal year ending September 30, 1982[.] *and $160,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.*

* * * * * * *

NOTE.—The following provisions of S. 431 do not amend the Clean Water Act.

(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1986.

* * * * * * *

SEC. 19. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.

○